

SUMMARY OF INCIDENT

On June 24, 2014, at approximately 1:38 A.M., Subject 1 and Subject 2 were seated on a bench in Park 1 in Chicago, IL. Officer A and Officer B were patrolling the area when they saw Subject 1 and Subject 2. Officer A and Officer B pulled over their marked vehicle and attempted to conduct a field interview with Subject 1 and Subject 2, as they were in the park after hours. Officer B noticed Subject 1 reaching into his front right pocket multiple times, to which Officer B instructed Subject 1 to stop. After the third time Subject 1 reached for his pocket, Officer B conducted a protective pat down, during which he felt an object that felt like a firearm. Subject 1 then fled the officers. At which point, Officer B unholstered his firearm and pointed it at Subject 1. Both officers pursued Subject 1, with Officer A in front of Officer B. Officer A attempted to pull Subject 1 to the ground by placing his hand on Subject 1's shoulder but he failed to stop Subject 1 from fleeing. Officer A drew his ASP baton and struck Subject 1 in the back of one of his legs, striking Subject 1 once which made him fall to the ground. Subject 1 was taken into custody and the officers recovered a firearm. On April 20, 2017, COPA received a handwritten letter from Subject 1, alleging that Officer B unlawfully struck him with his ASP baton and Officer A used excessive force when executing the arrest by standing on Subject 1's neck, face, knee and foot, and then handcuffed him too tightly.¹

ALLEGATIONS:

It is alleged that on June 24, 2014, at approximately 1:38AM, at Park 1, **Police Officer A**:

1. Used excessive force when arresting Subject 1, by standing on his neck, face, knee and foot, and then handcuffed him too tightly.

It is alleged that on June 24, 2014, at approximately 1:38AM, at Park 1, **Police Officer B**:

1. Unlawfully struck Subject 1 with his baton when attempting to Subject 1.

APPLICABLE RULES AND LAW

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 8: Disrespect to or maltreatment of any person, while on or off duty.

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

INVESTIGATION

The complainant, Subject 1, gave an **audio recorded interview** with the IPRA on July 18, 2017. In his interview, Subject 1 stated that on June 24, 2014, he took a brief walk in Park 1 with his girlfriend, Subject 2. Subject 1 and Subject 2 arrived shortly after Subject 1 left his work place, a barbershop where he was a manager. Subject 1 did not recall what time he was in the park, but he recalled he had a busy day at work and got off work late. Before Subject 1 and Subject 2 left, they sat at a bench near one of the park entrances. Soon after, a marked police vehicle drove up over the curb next to them and Subject 1 heard an officer, Officer B, in the vehicle reciting conceal and carry laws out loud through the driver side window of the vehicle. Subject 1 stated Officer B was stating multiple things at once: he was reciting conceal carry laws, telling Subject 2 and Subject 1 that the park was closed, and requesting Subject 2's and Subject 1's identification. Subject 1 did not know why Officer B was reciting conceal and carry laws out loud and Subject 1 stated he was confused. Subject 1 stated Officer B was taller, and Officer A was shorter and heavier. Subject 1 stated that Officer A was the main aggressor.

One of the officers was also instructing Subject 1 and Subject 2 to leave the park. Subject 1 stated that the officers never activated their emergency lights nor shined their spotlight on Subject 1 and Subject 2. When Subject 1 and Subject 2 stood up to leave, one of the officers asked for their identification. Subject 1 stated that he reached into his pocket to pull out his identification. When Subject 1 reached into his pocket for his identification, both officers exited their vehicle. Subject 1 stated one officer immediately approached him, and both officers focused their attention on him and not Subject 2. Officer A began patting him down and asked him if he had anything on him. The officer then took Subject 1's keys, identification, and money out of Subject 1's pockets and made Subject 1 hold his keys, identification, and money in his hands. Officer B stood back. Subject 1 stated both he and Subject 2 were not drinking or smoking in the park. Subject 1 stated that he believed he had a "nervous attack," and he ran away from the officers deeper into the park while screaming "they're going to kill me."

Subject 1 stated that Officer B pointed his firearm at Subject 1 and stated, "Stop before we shoot." Officer A then chased Subject 1 with his ASP baton drawn, and Officer A struck Subject 1 once in his right calf. Subject 1 stated that from the incident from the moment he began running to the time he was struck in the right calf took about fifteen seconds or less. Officer B then rushed over to Subject 1, slammed him on the ground, put his knee into Subject 1's neck and back, stood on his neck, and handcuffed Subject 1. Subject 1 stated he was placed in a police van and transported to the station by a different officer.

Subject 1 stated he was handcuffed too tightly and his wrists were swollen and cut. Subject 1 stated Subject 2 told him that Officer B "clicked" his firearm when Subject 1 was running from the officers, but the firearm did not fire. Subject 1 ran with his hands up in the air and he stated his hands remained in the air before he fell to the ground. Subject 1 also stated Subject 2 remained standing near the police vehicle when he ran away from the police officers. Subject 1 stated he had

a little bag of marijuana in his hands when the police arrived and Subject 2 had a purse with her. Subject 1 told the officers he had a bag of marijuana, to which the officers did not respond to. The officers found the bag of marijuana after Subject 1 was placed into handcuffs. Subject 1 further stated that he owned a firearm and when he was sitting on the bench prior to the police officers arriving, he placed his firearm in some grass roughly five feet behind him to his left. Subject 1 further stated that he did not have the firearm on his person when the officers arrived or any time after. Subject 1 also stated he believed the allegations of misconduct in his original letter to IPRA were incorrect, and that Officer A struck him with a baton, and Officer B stood on his neck, face, knee and foot, and then handcuffed him too tightly. Subject 1 stated the officers did not have a reason to approach him and he showed no signs of aggression to the officers. Subject 1 further stated that the officers made up a false statement regarding the aggravated battery against a police officer charge. (Attachment 15)

A July 26, 2017 **telephone conversation between Subject 2 and IPRA** revealed more information regarding the incident. Subject 2 stated that she was dating Subject 1 on June 24, 2014. Subject 2 stated that she drove to Subject 1's place of employment, a barbershop, and picked him up after his shift. Subject 2 and Subject 1 drove near Park 1 and Subject 2 parked her car. Subject 1 bought Subject 2 a beverage at a nearby store. Subject 2 and Subject 1 walked through Park 1 to talk. Subject 2 stated she and Subject 1 were not in Park 1 very long when a Chicago Police Department vehicle pulled up, drove over the curb in the park and pulled up near Subject 2 and Subject 1. Subject 2 stated there were two police officers in the vehicle. Officer B was the driver and Officer A was in the passenger seat.

Officer A stated to Subject 2 and Subject 1, "you know the park is about to close?" or something to that effect. Officer A then exited the vehicle, walked up to Subject 1 and Subject 2 and requested their identification. Subject 2 stated that the police officers thought Subject 1 was unzipping a zipper or reaching into his pockets, as he was moving his hands into his clothing. Officer B did not exit the vehicle. Subject 2 stated she was to the side of the police vehicle, while Officer A and Subject 1 were in front of the police vehicle. Subject 2 stated she then witnessed Subject 1 running away from Officer A, and Officer A chasing Subject 1 close behind. Subject 1 was yelling while running. Subject 2 stated she saw Subject 1 being struck with a "wand" while Subject 1's hands were up and he was lying on the ground. Subject 2 was not sure how Subject 1 got down to the ground. Subject 2 stated that Subject 1 was not resisting and she could not tell who was hitting him. Subject 1 was then put in handcuffs while he lay on the ground.

Subject 2 further stated that Subject 1 did not have a weapon on his person. She stated Subject 1 only had a bag with him and he left it in Subject 2's car when the two exited Subject 2's vehicle. She stated Subject 1 never dropped anything in a bush near the bench they were sitting at prior to the police arriving nor did he drop anything in Park 1. Subject 2 stated she did not see any firearms, nor did she hear the "click" of a firearm or possible misfire. Subject 2 noted that it was dark out and she did not know how the foot chase began or why. She did not know how many additional police officers came or which one struck Subject 1. She did not know if Subject 1 owned a firearm, but believed he did not. Subject 2 stated that the conduct of Officer A was "rude and wrong." (Attachment 28)

Officer A gave an **audio recorded interview** with IPRA on August 17, 2017. In his

interview, Officer A stated that on June 24, 2014, he was on duty with his partner Officer B. Officer A stated they were on routine patrol, patrolling Park 1, Chicago Park District Property, when they noticed Subject 1 with a female companion at the park. This was approximately five to ten minutes before the time of arrest. Officer A saw Subject 1 and the female companion sitting at a park bench about 25 to 30 feet away. Officer A and Officer B approached Subject 1 and his companion and called them over to their squad car to conduct a field interview as Park 1 was closed. Officer A and Officer B exited their squad car when they asked Subject 1 and his companion to come over for a field interview. Officer A began taking down the female's name and birth date and Subject 1's name and birth date to issue a citation. Officer A then heard his partner, Officer B, state "keep your hands on the car where we can see them." At this point, the officers had not yet performed a protective pat down on either Subject 1 or the female companion. Officer A looked up and then saw Subject 1 reaching for his pocket. Subject 1 was again ordered to keep his hands visible on the car. Officer A then began taking down more information when he heard Officer B state again, "put your hands back on the car. Stop reaching, whatever you are reaching for, stop reaching." Officer A then stated Subject 1 reached for his pocket a third time, at which point both Officer A and Officer B decided to perform a protective pat down.

Officer A was within five feet of Subject 1. Officer B performed a protective pat down on Subject 1 and felt his pocket. Officer B then asked Subject 1 if he had a Firearm Owners Identification card or a concealed carry license for a firearm. Subject 1 then ran away at full speed deeper into Ogden Park. Subject 1 was reaching into his pocket while running. Officer A caught up to Subject 1 and put his left hand on Subject 1 to try and detain him at which time Subject 1 tried to pull away and elbowed Officer A's left thumb, jamming it. Both officers gave Subject 1 commands to stop running and stop reaching into his pocket. Officer A then pulled out his ASP baton and struck Subject 1 once in the leg. Officer A further stated that Subject 1 had his gun in his hand, with his hand in his right front pocket. After Subject 1 was struck once in the leg with the baton, Subject 1 fell. Officer A and Officer B then performed an emergency handcuffing on Subject 1. The officers called for assist units, and other officers arrived on scene.

Officer A stated that he did not recall if he ever stepped on Subject 1's knee or foot. Officer A stated that Subject 1 told him, "All I have is some weed." Officer A recalled that as he was chasing Subject 1, Officer B had his firearm drawn, but Officer A was unsure where the firearm was pointing. Officer B was about 5 to 10 feet behind Subject 1 and Officer A. Officer A never heard the firearm misfire or go off in any way. Officer A stated that the female companion remained near the squad car when the chase occurred. Officer A also stated that Park 1 was dark with poor artificial lighting. Officer A did not notice any bleeding or injuries on Subject 1, but if there was, the officers would have noted that in their reports. Officer A never drew his firearm. Officer A said the handle of Subject 1's firearm was visible outside of Subject 1's front right pant pocket and Subject 1 was actively trying to remove the firearm from his pocket. Officer A stated that Officer B recovered the firearm after Subject 1 was handcuffed. Officer A did not recall if they found anything near the bench where Subject 1 and his companion were originally sitting.

Officer B gave an **audio recorded interview** with IPRA on August 17, 2017. In his interview, Officer B stated that on June 24, 2014, he was on duty and recalled the incident with Subject 1. Officer B stated he was with his partner, Officer A, and both officers were in uniform. Both officers arrived at Park 1 somewhere between 1:00 A.M. and 2:00 A.M., and Officer B noted that his arrival

on the arrest report was 1:37 A.M. Officer B stated Park 1 closes at 11 P.M. Officer B stated he saw Subject 1 sitting at a park bench in Park 1 with a female sitting in his lap. The officers stopped their vehicle near Subject 1 and his female companion about 20 feet away from the two. Shortly after, the two officers exited their vehicle to conduct a field interview with Subject 1 and the female. Officer B could not recall if they began talking to Subject 1 and the female in their vehicle or once they exited their vehicle.

Officer A was conducting the field interview and Officer B was in the guard position, standing further away from Officer A, Subject 1, and Subject 2. Officer A spoke with the female first and took the female's identification. At this point, Subject 1 reached into his front right pocket and broke the threshold of the pocket with his fingertips. Neither officer gave Subject 1 a command to reach into his pocket. Officer B told Subject 1 to stop reaching in his pocket or anywhere unless he was directed to do so. Subject 1 then apologized after reaching into his pocket.

Very shortly after, Subject 1 began to reach into his pocket again. Officer B noticed a "decent sized" bulge in Subject 1's pocket. Subject 1 reached into his pocket a second time, breaking the threshold of his pocket with his fingers, and Officer B once again ordered Subject 1 to stop reaching. Subject 1 again apologized. Officer B was about 10 feet away. Officer B said that the lighting in the park was artificial, but there was enough light for him to clearly see Subject 1's reaching into his pocket.

Officer B then approached Subject 1 and performed a protective pat down. Officer B felt what he believed was a firearm in Subject 1's pocket based on Officer B's experience with firearms. Officer B then asked Subject 1 if he had a conceal carry permit, at which point Subject 1 fled on foot. Subject 1 started running deeper into Park 1. Both Officer B and Officer A pursued Subject 1 through the park. Officer A was running directly behind Subject 1 and Officer B was running behind Subject 1, further back than Officer A, and offset to Subject 1's right. Officer B stated he did not know what the female was doing while he was pursuing Subject 1.

Officer B stated that he and Officer A were about 5 to 10 feet behind Subject 1 when they chased Subject 1. While running, Officer B gave Subject 1 verbal commands to stop, which Subject 1 disregarded. Officer B stated Subject 1 reached for his pocket again, "as if he was trying to pull the firearm out." Officer B believed Subject 1 jammed his hand in his pocket and could not get the firearm out of his pocket. Officer B stated Officer A tried to pull down Subject 1 with one hand while chasing him, but the attempt to bring down Subject 1 was unsuccessful. Officer B stated that while Officer A and Officer B pursued Subject 1, Subject 1 made contact with Officer A when Subject 1's arm hit Officer A's thumb, jamming it and causing injury. Subject 1 continued to flee with both officers chasing. Officer B stated he was in fear for his life. Officer B saw Officer A strike Subject 1 in the back of the leg with his ASP baton. Officer B was right behind Officer A and Subject 1 when he saw the baton strike. Officer B stated he never struck Subject 1 with an ASP baton. At the start of the pursuit, Officer B unholstered his firearm and pointed it at Subject 1, as Officer B believed Subject 1 was in possession of a firearm and was actively trying to draw his firearm. Officer B kept his firearm unholstered for the entirety of the pursuit. Officer B stated Subject 1 fell to the ground and then Officer B holstered his firearm. Officer B stated he never pulled the trigger on his firearm. Officer B stated his firearm "absolutely" did not misfire.

The officers got control of Subject 1's arms and Officer B stated that he believes he handcuffed Subject 1 by performing a standard emergency handcuffing procedure. This involved placing his right knee behind the upper right back of Subject 1, grabbing Subject 1's arm and placing the handcuffs on him. Officer B stated Subject 1 stiffened on the ground and Subject 1 continued to struggle. Officer B stated Subject 1 started yelling out, "all I have is weed." Officer B noticed a bag of marijuana near Subject 1 on the ground, but Officer B was unsure how it got there. Officer B recovered a firearm from Subject 1's person, which was found in Subject 1's front right pant pocket. Officer B did not notice any injuries on Subject 1 but believed Subject 1 went to the hospital at some point. Officer B did not recall how tight the handcuffs were. Officer B does not recall if Subject 1 complained that his handcuffs were too tight. Officer B stated he never stepped on Subject 1's neck, head, knee, foot, nor did he see Officer A step on Subject 1 at all. Officer B did not recover anything near the bench where Subject 1 and the female were initially sitting at and was unsure if anyone, himself or the additional officers that responded, searched near that bench.

An **Arrest Report** for Subject 1, dated June 24, 2014, indicates that arresting officers discovered Subject 1 to be in possession of a firearm in Park 1 after closing hours. Subject 1 attempted to defeat the arrest by fleeing from the arresting officers on foot. Subject 1 was also pulling away and flailing his arms. Officer A was sustained an injury to his left thumb from Subject 1's flailing. The arresting officers were Officer A and Officer B. (Attachment 6)

An **Original Case Incident Report** regarding this incident notes that arresting officers B and A observed Subject 1 and Subject 2 sitting on park bench in Park 1 after park closing hours. Officers B and A approached Subject 2 and Subject 1 for a field interview when Subject 1 began reaching into his front right pant pocket. Officer B ordered Subject 1 to not reach for anything unless directed to do so. Subject 1 complied and apologized. Officers B and A observed a large bulge from Subject 1's front right pant pocket. Officers B and A again continued a field interview of Subject 1 and Subject 2 when Subject 1 once again reached into his front right pocket. Officer B ordered Subject 1 to stop reaching, and Subject 1 apologized again. Officer B then performed a protective pat down, when Subject 1 reached for his front right pant pocket a third time. Officer B ordered Subject 1 to stop reaching for his front pant pocket a third time. Subject 1 put his hands in the air. During the pat down, Officer B felt an object with the consistency of a firearm in Subject 1's front right pocket. Officer B then asked Subject 1 if he had a concealed carry permit. Subject 1 then fled on foot, deeper into Park 1. Officer B yelled out that Subject 1 was in possession of a firearm, and both Officer B and Officer A pursued Subject 1 on foot. When Officer A attempted to perform an emergency takedown, Subject 1 pulled away and flailed his arms, defeating the takedown. Officer A sustained pain and swelling to his left thumb from Subject 1's flailing. Subject 1 continued to flee on foot and began reaching towards his right front pocket. Officer A then struck Subject 1 in the lower right leg with his ASP baton to perform an emergency takedown. Subject 1 fell to the ground. Officer A and B performed emergency handcuffing. Subject 1 then yelled out "All I have is some weed." The officers observed one large clear knotted plastic bag lying next to Subject 1, which contained approximately 1.0 gram of suspected cannabis. The officers radioed for assistance. Officer B recovered a firearm with seven live rounds loaded from the right front pocket of Subject 1. Subject 1 repeatedly yelled out "I don't have a gun." Officer A asked Subject 1 why he ran, to which Subject 1 replied, "I had to get rid of the gun." (Attachment 7)

Officer B's **Tactical Response Report ("TRR")** documented his use of force against Subject 1 on June 24, 2014 at 01:37 A.M. at Park 1. The TRR lists that Subject 1 did not follow verbal direction, fled, and pulled away from the officers. The TRR further states that the officers were faced with an imminent threat of battery with a weapon, classifying Subject 1 as an assailant. Officer B noted that member presence, verbal commands, and take down/emergency handcuffing were employed against Subject 1. Additional information in the TRR states, "Subject was armed with firearm. Subject made several attempts to retrieve firearm from right front pant pocket. R/O assi[s]ted in performance of emergency handcuffing to arrest subject." The TRR also states that the subject was armed. Subject 1 alleged injury, but was in apparently normal condition. (Attachment 9)

Officer A's **Tactical Response Report ("TRR")** documented his use of force against Subject 1 on June 24, 2014 at 01:37 A.M. at Park 1. The TRR lists that Subject 1 did not follow verbal direction, fled, and pulled away from the officers. The TRR further states that the officers were faced with an imminent threat of battery with a weapon, and were attacked without a weapon classifying Subject 1 as an assailant. Officer A noted that member presence, verbal commands, take down/ emergency handcuffing, and an impact weapon were employed against Subject 1. Additional information in the TRR states, "Subject was armed with a firearm and made several attempts to retrieve the firearm from his right pant pocket as he was fleeing. Officer A struck the offender one time about the right leg with an impact weapon (ASP) to perform an emergency takedown." The TRR also states that the subject was armed. Subject 1 alleged injury, but was in apparently normal condition. (Attachment 10)

A **Property Inventory Form** for Subject 1 documented the property taken from Subject 1 after his arrest. A firearm with one magazine and seven live bullets were inventoried and recovered on June 24, 2014. Two clear knotted bags containing suspect cannabis and three yellow zip lock baggies containing suspect cannabis were also recovered and inventoried on June 24, 2014 after Subject 1's arrest. (Attachment 11)

The Cook County Public Defender's Office **Photographs of Subject 1**, taken on June 25th, 2014, show Subject 1's profile, hands, wrists and right calf. The photographs were taken the day after the incident. Attachment 30 is a copy of the court order requiring the Cook County Sheriff to allow the Law Office of the Cook County Public Defender to take photographs of Subject 1, dated June 25, 2014. Attachment 31 shows Subject 1's profile, and he is holding an identification chart. Attachment 32 is a closer photo of Subject 1's face and contains the identification chart. Attachment 33 is a photograph of Subject 1's hands, balled into fists. A slight abrasion can be seen on the right of Subject 1's left wrist. The number 19 is written in black marker on both of his hands. Attachment 34 is a close-up photograph of Subject 1's left wrist. A slight abrasion can be seen on the right of his left wrist. Attachment 35 is a photograph of Subject 1's right calf, and Attachment 36 is a closer photograph of Subject 1's right calf. No visible injury can be seen on Subject 1's right calf. (Attachment 30 – 36)

ANALYSIS

Subject 1 alleges that on June 24, 2014, at approximately 1:38 A.M. at Park 1, Officer B unlawfully struck him with his ASP baton and Officer A used excessive force when executing the

arrest by standing on Subject 1's neck, face, knee and foot, and then handcuffed him too tightly.

According to Subject 1's interview with COPA, he may have misidentified which officer used excessive force and which officer unlawfully struck him with his baton. During the course of the investigation, both officers were asked if they had performed these actions against Subject 1. The investigation revealed that Officer A struck Subject 1 with his ASP baton and Officer B placed Subject 1 into handcuffs.

I. The Initial Investigative Stop Was Justified

In Subject 1's handwritten statement, he alleges that he was targeted specifically by Officer B and Officer A, and was discriminated against and stereotyped as a possible gun offender based on his presence and appearance.

In *Terry v. Ohio*, the Supreme Court found that a police officer may stop a person if they have a reasonable suspicion that the person has committed or is about to commit a crime. For their protection, a police officer may also "frisk" the suspect for weapons if they have reasonable suspicion that the suspect is armed and dangerous. A *Terry* frisk is a quick surface search of the person's outer clothing for weapons. The reasonable suspicion must be based on "specific and articulable facts" and not merely a hunch. The reasonable suspicion for a *Terry* frisk is independent from the reasonable suspicion to initially stop the suspect.

The Illinois legislature has codified this *Terry* standard which provides the following:

"An officer may, after identifying himself as a peace officer, stop any person in a public place for a reasonable period of time when the officer infers from the circumstances that the person is committing, is about to commit, or has committed an offense..." 725 ILCS 5/107-14 (2008).

Thus, the *Terry* standard allows an officer to conduct a brief investigative stop when there is reasonable, articulable suspicion of criminal activity. *People v. Jackson*, 366 Ill.Dec.164, 170 (1st Dist. 2012). The purpose of a *Terry* stop is to permit police to investigate situations or circumstances that provoke suspicion in order to dispel or confirm those suspicions. Officers initiating an investigatory stop must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, suggest criminal activity. *U.S. v. Ruiz*, 785 F.3d 1134, 1141 (7th Cir. 2015). Context is extremely important in these instances; the reasonable suspicion needed to initiate a *Terry* stop can arise from behavior that may in other circumstances be considered innocent. *Id.* Therefore, the behavior and characteristics of the suspect can be taken into consideration by the officers.

Reasonable suspicion is a lower threshold than probable cause and considerably less than a preponderance of the evidence. *Id.* When reviewing an officer's actions in the context of *Terry*, the situation confronting the officers must be so far from the ordinary that any competent officer would be expected to act quickly. *People v. Shipp*, 393 Ill. Dec. 301, 309 (Ill. App. Ct. 2d Dist. 2015) quoting *People v. Thomas*, 198 Ill.2d 103 (2001). Therefore, the facts should be considered from the perspective of a reasonable officer confronted with the situation. *Id.*

A *Terry* stop can ripen to the level of an arrest, becoming custodial in nature, and require probable cause. This occurs when the stop becomes too long or unreasonably intrusive. *Id.* at 309. A seizure qualifies as an arrest only if a reasonable person in the suspect's position would not have felt free to leave. *U.S. v. Hill*, 818 F.3d 289, 292 (7th Circuit 2016). Factors to consider include the threatening presence of several officers, the display of a weapon by an officer, the physical touching of the suspect's person, or the officer's language or tone of voice which indicates that compliance with the officer's request could be compelled. *People v. Santovi*, 2014 Ill. App. 3d 130075 ¶44 (2014).

In his statement to COPA, Subject 1 stated he did not know approximately what time he was at Park 1. Subject 2 also did not state the exact time she and Subject 1 were at Park 1. Officer A and Officer B stated they saw Subject 1 and Subject 2 at Park 1 after hours. The park closed at 11:00 P.M. and Officer B and Officer A were patrolling the park after 1:00 A.M. Subject 1's statement, Subject 2's statement, and both officer's statements suggest that Subject 2 and Subject 1 were in the park after closing hours. Officer B and Officer A had reasonable, articulable suspicion of criminal activity, as Subject 1 and Subject 2 were in a Chicago Park District park after hours, which is a violation of Municipal Code of Chicago §10-36-110². Municipal Code of Chicago Chapter 10-36 Article I §10-36-185 gives the Chicago Police Department authority to enforce §10-36-110 of the Municipal Code of Chicago.³ As such, Officer B and Officer A were justified in approaching Subject 1 and Subject 2 to conduct an investigative stop, as Subject 1 and Subject 2 were likely violating Municipal Code of Chicago §10-36-110 by being in Park 1 after hours.

II. The Protective Pat Down of Subject 1 Was Justified

The investigation following *Terry* must be reasonably related in scope and duration to the circumstances that justified the stop from the onset. Additionally, even if an investigative stop is warranted, a police officer will need more to justify a substantive frisk. To justify a protective pat down of a properly detained person, the investigating officer must reasonably believe that the person is armed and dangerous. *Jackson*, 366 Ill. Dec. at 170.

Officer A's and Officer B's interviews suggest that the officers reasonably believed Subject 1 had a weapon in his pocket. According to both of the officers' statements to COPA, the Arrest Report, and the Original Case Incident Report, Subject 1 reached into his front right pocket multiple times when the officers were talking to him and Subject 2. Officer A also stated in his interview to COPA that he saw the handle of the firearm outside of Subject 1's front right pant

² Municipal Code of Chicago Chapter 10-36 Article I §10-36-110 states that no person shall be or remain in any public park not fenced in or provided with gates between the hours of 11:00 p.m. and 6:00 a.m. on the following day.

³ Municipal Code of Chicago Chapter 10-36 Article I §10-36-185, states that members of the Chicago Police Department shall have the authority to enforce certain provisions of the Chicago Park District Code. In addition, the provision states any person who violates certain provisions of the Chicago Park District code shall be subject to a fine not to exceed \$500.00 and shall be subject to an order requiring the violator to pay restitution when the violation involves property to damage to property.

pocket and Subject 1 was actively trying to remove the firearm from his pocket. Based on the officers' statements, the officers were reasonable in their belief that Subject 1 had a weapon, and thus Officer B's protective pat down of Subject 1 was justified. Both officers' statements corroborated the fact that Subject 1 continuously reached into his front right pocket, and was told multiple times by Officer B to stop reaching for his front right pocket. In Subject 1's interview, he stated he had a firearm, but placed it into a nearby bush prior to the officers arriving. Subject 2's statement contradicted Subject 1's statement, in that Subject 2 stated Subject 1 did not have a firearm and never saw Subject 1 place a firearm or any object in a bush in Park 1. Subject 2 also stated that the police officers thought Subject 1 was unzipping a zipper or reaching into his pockets, as he was moving his hands into his clothing. Subject 1 stated the officers reached into his pockets to search him, and the officers place Subject 1's personal items in his hands while searching him. Neither Officer A's statement, Officer B's statement, or Subject 2's statement corroborated the officers placing their hands in Subject 1's pockets to search him, and as such Subject 1's statement was less credible. Thus, the preponderance of the evidence suggests Subject 1 was reaching into his pockets, and the police officers reasonably believed Subject 1 could have been reaching for a weapon in his front right pocket.

III. Officer A's Baton Strike Was Within Policy

According to General Order ("GO") 03-02-01, the Chicago Police Department utilizes a Use of Force Model to provide guidance on the appropriate amount of force to be used to effect a lawful purpose. The model may progress from member presence to the application of deadly force. The primary objective of the use of force is to ensure control of a subject with the reasonable force necessary based on the totality of the circumstances. Department members must escalate or de-escalate the amount of force which is reasonably necessary to overcome the subject's resistance and to gain control over the subject.

GO 03-02-01 states that there are two types of resisters. A passive resister is defined by non-movement in response to verbal and other direction, and includes variable positioning. An active resister is defined by movement to avoid physical control and this can include "variable dynamics." GO 03-02-02 further defines an active resister as "a person whose actions attempt to create distance between that person and the member's reach with the intent to avoid physical control and/or defeat the arrest. This type of resistance includes gestures ranging from evasive movement of the arm, through flailing arms, to full flight by running."

GO 03-02-01 and GO 03-02-02 further identify three categories of an assailant: A subject whose actions are aggressively offensive without weapons, a subject whose actions will likely cause physical injury with or without a deadly weapon, and a subject whose actions will likely cause death or serious physical injuries. GO 03-02-02 defines an assailant as "a subject who is using or threatening the imminent use of force against himself/herself or another person."

According to GO 03-02-02, the baton is the member's primary impact weapon, which is used for striking. Impact weapons are designed to establish control by means of applying mechanical impact to a subject to disable elements of the subject's skeletal structure. An impact weapon can be used against all three types of assailants. Firearms or deadly force may be appropriate when dealing with the third category of assailant: an assailant whose actions will likely cause death or

serious physical injury to another.

Based on Subject 1's interview, Subject 2's interview, Officer A's interview, and Officer B's interview, it is established that Subject 1 ran from Officer B while he was performing the protective pat down. By running from Officer B and Officer A, Subject 1 became an active resister as defined by GO 03-02-01 and GO 03-02-02. Subject 1 ran from the officers during the protective pat down and his actions attempted to create distance between himself and the officer's reach, likely with the intent to avoid physical control and/or defeat the arrest. As the officers pursued Subject 1, Subject 1 flailed his arms, and one arm struck Officer A in his thumb, causing injury. Subject 1's flailing changed him from an active resister to an assailant per GO 03-02-01 and GO 03-02-02, as he caused physical injury to Officer A, and his actions could have likely caused more physical injury. As Subject 1 became an assailant, the amount of force the officers could have used to effectuate the arrest raised. An impact weapon, such as Officer A's ASP baton, can lawfully be used against an assailant to effectuate the arrest. Therefore, Officer A one ASP baton strike to Subject 1's leg was lawful in effectuating the arrest and preventing Subject 1 from escaping.

Officer A's and Officer B's interviews suggest that the officers reasonably believed Subject 1 had a firearm in his pocket. According to both of the officers' statements, the Arrest Report, and the Original Case Incident Report, Subject 1 reached into his front right pocket multiple times when the officers were talking to him and Subject 2, and he continued to reach in his pocket while running away from the officers. Officer B stated that based on his experience handling firearms, he felt what appeared to be a firearm in Subject 1 front right pocket during his protective pat down of Subject 1. Officer A also stated in his interview to COPA that he saw the handle of the firearm outside of Subject 1's front right pant pocket and Subject 1 was actively trying to remove the firearm from his pocket. Based on the totality of the circumstances, the officers reasonably believed Subject 1 had a weapon, and thus Subject 1 could once again be defined as an assailant according to GO 03-02-01 and GO 03-02-02. The officers reasonably believed Subject 1 had a weapon, a firearm, which could have caused death or serious physical injury. Based on the preponderance of the evidence, as gathered by COPA, the officers' beliefs that Subject 1 could have caused death or serious injury to them or others was reasonable. As such, Officer A's use of his ASP baton in striking Subject 1 once to the leg to effectuate the arrest was within policy.

IV. There Is Not Enough Evidence To Establish That Any Officer Stood On Subject 1 Or Handcuffed Him Too Tightly

The evidence does not suggest whether either Officer B or Officer A stepped on Subject 1's neck, head, foot, or knee. Subject 1 stated in his interview with COPA that he was "slammed" to the ground, and an officer stepped on his neck. In their interviews with COPA, both Officer A and Officer B stated they never stood on Subject 1's neck, head, knee, or foot during the arrest. There is not enough evidence to determine whether or not either of the officers stood on Subject 1.

Subject 1 also stated he was handcuffed too tightly and his wrists were swollen and cut. There is not enough evidence to determine whether Subject 1 was handcuffed too tightly. The photographs of Subject 1 taken by the Cook County Office of the Public Defender show a slight abrasion to the right side of Subject 1's left wrist. This abrasion is the only sign of possible injury on Subject 1's wrists. It is a minor abrasion, and could have occurred simply from Subject 1 being

handcuffed. The mere existence of the abrasion does not make it more likely that not than the handcuffs were too tight.

CONCLUSION

Based on the evidence gleaned from the investigation, and COPA's preponderance of the evidence burden, COPA recommends a finding of Exonerated for **Allegation #1** against Officer A, as his baton strike to Subject 1 was within policy according to GO-03-02 and GO-03-02-01.

COPA further recommends a finding of Not Sustained for **Allegation #1** against Officer B, as there is not enough evidence to determine whether Officer B did or did not use excessive force when executing the arrest by standing on Subject 1's neck, face, knee and foot, nor is there enough evidence to determine Officer B handcuffed Subject 1 too tightly causing injury.